



Legislative Bulletin.....March 11, 2004

Contents:

H.R. 3717 — Broadcast Decency Enforcement Act of 2004

Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: 0

Year to Date Prior to Today's Bills: 7

Total Cost of Discretionary Authorizations: \$0 million over five years

*Year to Date Prior to Today's Bills: \$10.347 billion over five years**

Total Amount of Revenue Reductions: \$ -1 million over five years

Year to Date Prior to Today's Bills: \$304 million over five years

Total Change in Mandatory Spending: 0

*Year to Date Prior to Today's Bills: -\$258 million over five years**

Total New State & Local Government Mandates: 0

Year to Date Prior to Today's Bills: 4

Total New Private Sector Mandates: 0

Year to Date Prior to Today's Bills: 7

*Not including the costs contained in H.R. 3783, the Surface Transportation Extension Act, which passed the House on 2/11/04. A cost estimate remains unavailable.

H.R. 3717 - Broadcast Decency Enforcement Act of 2004 (Rep. Upton)

Order of Business: The bill is scheduled for consideration on Thursday, March 11, 2004, under a structured rule, with a manager's amendment that includes technical changes and with 2 other amendments made in order. A motion to recommit will also be in order. The amendments can be temporarily viewed at <http://www.house.gov/rules/108rule3717.htm>

Summary: H.R. 3717 amends the Communications Act of 1934 (47 U.S.C. 503) to add a new provision for broadcast station licensees or permittees or an applicant that is found by the FCC to have broadcast "obscene, indecent or profane material" to be fined up to \$500,000 for each

violation (up from the current maximum of \$27,500). The bill also amends and increases fines for individuals up to \$500,000 for each violation (up from the current maximum of \$11,000). An individual may not be let off from a fine if he is found to have “willfully or intentionally” uttered the obscene, indecent, or profane material.

Within 180 days after the date of receiving the allegation, the FCC must act and the fines or a settlement must be entered into within 270 days after the receipt of the allegation. If a licensee is found by the FCC to be in violation in three or more proceedings during the term of its broadcast license, then an FCC proceeding to consider license revocation is automatically triggered.

In deliberating the level of fines, the bill lays out the following criteria for the FCC to consider culpability:

- Whether the material uttered was live or recorded, scripted or unscripted;
- Whether the violator had a “reasonable opportunity” to review the programming;
- Whether the violator had a time delay;
- The size of the viewing or listening audience; and
- Whether the utterance was during a children’s television program.

The bill also specifies considerations for ability to pay the fine, such as if the violator is a company or individual and the size of the company, etc. There is an exception for station licensees or permittees that receive programming from “network organizations” and were not, for example, given “a reasonable opportunity to review the programming in advance.” The Commission, under H.R. 3717 may require a violator to broadcast public service announcements (to up to five times the audience size as heard the utterance) “that serve the educational and informational needs of children.” It may also consider the violation under license renewal and disqualification procedures.

H.R. 3717 adds new provisions to the FCC’s annual report to Congress, for example, requiring inclusion of the number of complaints received by the Commission and the number dismissed and details on the cases acted upon. There is also a Sense of Congress in the bill that the broadcast television stations “should reinstitute a family viewing policy for broadcasters.”

The bill applies the original severability clause from the 1934 Act to all changes made in this bill. The clause states: “If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.”

Amendments made in order:

Rep. Upton Manager’s Amendment: The amendment modifies provisions in the bill to ensure that the FCC revocation and disqualification procedures established under this bill cannot begin until a court of competent jurisdiction has ordered the fine and it has become final. This preserves the rights of a licensee to appeal the order. The amendment also adds other items that must be included in the annual audit, including the number of times that violators refuse to pay a forfeiture order and that the FCC refers such orders for collection.

Rep. Sessions Amendment: The amendment requires the GAO report to study and report back to Congress within one year: (1) the number of complaints concerning the broadcasting of obscene, indecent, and profane material to the Federal Communications Commission; (2) the number of such complaints that result in final agency actions by the Commission; (3) the length of time taken by the Commission in responding to such complaints; (4) what mechanisms the Commission has established to receive, investigate, and respond to such complaints; and (5) whether complainants to the Commission are adequately informed by the Commission of the responses to their complaints. (**Note:** this GAO report is in addition to the annual FCC report to Congress already in current law and expanded under H.R. 3717).

Rep. Schakowsky Amendment: The amendment adds a provision that would exempt individuals from facing the increased \$500,000 forfeiture penalty. In other words, the effect of the amendment would be that the fine limit for individuals would remain at a maximum \$11,000 for each violation, instead of a maximum of \$500,000 for each violation.

Additional Information: According to the Committee, federal law specifically prohibits the utterance of “any obscene, indecent or profane language by means of radio communication” (18 U.S.C. 1464), and the FCC is charged with enforcing this statute (47 U.S.C. 503). By regulation, the FCC prohibits the broadcast of obscene material at any time, and indecent material during the hours of 6 a.m. to 10 p.m. (47 C.F.R. 73.3999), the time period when children are most likely to be watching television and listening to the radio.

Committee Action: The bill was introduced on January 21, 2004, and referred to the House Energy and Commerce Committee. The Committee considered the bill and ordered it to be reported to the full House on March 3, 2004, with an amendment, by a vote of 49-1.

Cost to Taxpayers: CBO estimates that federal revenues resulting from the penalties in H.R. 3717 would increase by less than \$500,000 in 2004 and by around \$1 million per year over the 2004-2009 period (\$5 million total). The increase in collections actually could be much higher or lower, depending on the number of penalties levied from year to year. CBO estimates that implementing H.R. 3717 would not have a significant effect on spending subject to appropriation and would not affect direct spending. The FCC did not collect any penalties for indecency violations in 2003, but has collected \$800,000 during the first five months of 2004.

Does the Bill Create New Federal Programs or Rules?: No. The bill increases current fines and penalties for FCC violations and modifies existing requirements for the FCC’s annual report.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: H.R. 3717 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would be unlikely to impose costs on state, local, and tribal governments, nor does it contain any new private-sector mandates. To the extent that public broadcasters would be affected by the increased penalties for indecency, they would incur additional costs. CBO estimates that those additional costs, if any, would be minimal because complaints regarding indecency against publicly owned broadcasting outlets are rare. The bill contains a new potential penalty requiring violating companies to broadcast public service

announcements to children, but CBO does not consider this a new mandate as defined under the law.

Constitutional Authority: The Energy and Commerce Committee in Report #108-434 finds authority under Article I, Section 8, clause 3 of the Constitution, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

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